IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

SECOND APPEAL NO.240 OF 2007
Along with
Civil Application No.479 of 2007

Laxman Mrlidhar Gharat & Ors, .. Appellants
Applicants
(Orig.Respdts)

Mr Sonal h/f Filji Fredrick, for the appellants.
Mr T Sonawane h/f Mr M.M.Sathaye for respondent no.1.

Vs

Sonubai Shankar Pardhi,
since deceased through her L.R
Suresh Shankar Pardhi and ors. .. Respondents
(R.No.1-Orig.
Appellant.)

SECOND APPEAL NO.353 OF 2007
Along with
Civil Application No.712 of 2007

Tukaram Vithal Sonawane and Anr. Appellants
Vs
Sonubai Shankar Paradi & ors. Respondents.

Mr M.S. Karnik for the appellants.
Mr Tushar Sonawane h/f Mr M.M.Sathaye for respondent no.1.

CORAM : D.B.BHOSALE,J.
DATED : 12.10.2007

P.C.:

1. Heard learned counsel for the parties.

2. Defendant nos 1 to 3 and 6 and 7 have filed these two appeals challenging the judgment and order dated 22.9.2006 passed by the first appellate court, by which an appeal filed by the original plaintiff has

been allowed and consequently the judgment and order dismissing the suit stands set aside. The suit was filed by one Sonubai against defendant nos 1 to 5 for declaration that the three sale deeds, Exhibits 59,60 and 61 dated 13.10.98, 13.10.1988 and 27.2.1989 respectively executed by Sonubai in favour of the defendants are invalid and illegal and they are not binding upon her.

3. Sonubai died during pendency of the suit and in her place, her adopted son Suresh contested the suit and the appeal. Suresh is the son of Sonubai's sister Kamlabai while defendant nos 1, 2 and 3 are the sons of her another sister Chimbai. Defendant nos 4 and 5 are the sons-in-law of Chimabai and defendant nos 6 and 7 claim to be the purchasers of the suit properties from defendant nos 1 to 3.

4. Learned counsel for the appellants in both the appeals mainly addressed this Court on the point whether the sale deeds were executed without consideration in favour of defendant nos 1 to 5. In support of their contention, my attention was invited to the evidence of D.W.1 Defendant no.1; DW 4 Parvat Thakare, Bond Writer DW-5 and the clerk in the office of the Sub Registrar. According to defendant no.1, an amount of consideration was paid at the time of

execution of an agreement of sale dated 13.6.1998 and the balance was paid in the presence of the Sub-Registrar at the time of registration of the document. According to the appellants, evidence of DW 4 and DW 6 support their contention. In my opinion, their evidence is of no avail to the appellants at all since none of the witnesses, except defendant no.1, specifically states as to how much amount was paid to Sonubai and when and where. Defendant no.1 in his evidence does not state that the bond writer and other witnesses were present when the amount was paid to Sonubai. The Bond writer does not make reference to the payment of consideration at all. Similarly the clerk in the office of the Sub Registrar does not state that the amount was paid in his presence. D.W 4 Thakare, though states that some amount was paid before the Sub-Registrar, does not state how much amount was paid. That apart, the defendants have not brought any material on record to show how they raised the funds for making payment of almost one lac of rupees to Sonubai as a consideration for the three sale deeds. The appellate court has considered the evidence on record in proper perspective and in paragraphs 17 to 20 has rightly held that the sale deeds at Exhibits 59,60 and 61 were without consideration and hence they are invalid. On this count alone these two appeals deserve to be dismissed.

5. Learned counsel for the parties fairly stated that they do not have a good case on the point of adoption and, therefore, they did not advance their arguments on that point. Insofar as point of fraud and misrepresentation is concerned, they did advance their submissions. I am satisfied that the findings of the appellate court on the point of consideration are just and proper and deserve no interference by this court. In my opinion, even the findings recorded by the appellate court on all the points are entirely based on the evidence on record and no interference is called for in these appeals. Hence the second appeals stand dismissed. As a consequence thereof, the civil applications are disposed of.

(D.B.BHOSALE,J.)